

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

INTERNATIONAL WOMEN'S DAY §
MARCH PLANNING COMMITTEE, AN §
UNINCORPORATED ASSOCIATION, §
AND SAN ANTONIO FREE SPEECH §
COALITION, AN UNINCORPORATED §
ASSOCIATION, §
Plaintiffs §

v. §

SA-07-CA-0971-XR

CITY OF SAN ANTONIO, PHIL §
HARDBERGER, IN HIS OFFICIAL §
CAPACITY AS MAYOR OF SAN §
ANTONIO; SHERYL L. SCULLEY, IN §
HER OFFICIAL CAPACITY AS CITY §
MANAGER OF SAN ANTONIO; AND §
WILLIAM P. McMANUS, IN HIS §
OFFICIAL CAPACITY AS CHIEF OF §
POLICE OF THE CITY OF SAN §
ANTONIO, §

Defendants §

**DEFENDANTS', PHIL HARDBERGER, IN HIS OFFICIAL CAPACITY AS
MAYOR OF SAN ANTONIO; SHERYL L. SCULLEY, IN HER OFFICIAL
CAPACITY AS CITY MANAGER OF SAN ANTONIO; AND WILLIAM P.
McMANUS, IN HIS OFFICIAL CAPACITY AS CHIEF OF POLICE OF THE
CITY OF SAN ANTONIO, MOTION TO DISMISS**

Now comes Defendants, Phil Hardberger, Sheryl L. Sculley, and William P. McManus sued in their official capacity and file this Motion to Dismiss and would show unto the Court as follows:

1. Plaintiffs have filed suit against the City of San Antonio and Phil Hardberger in his official capacity as Mayor of San Antonio, Sheryl L. Sculley in her official capacity as City Manager of San Antonio, and William P. McManus in his official capacity as Chief of Police of the City of San Antonio. Plaintiffs seek a permanent injunction

enjoining all defendants from enforcing a newly adopted City Ordinance related to Parades, Runs, Walks and Related Events.

2. Defendants Phil Hardberger, Sheryl L. Sculley, William P. McManus request the Court dismiss the suit against them in their official capacities as they are not necessary parties and the claims against them are redundant of the claims against the City of San Antonio. The mayor, city manager and police chief in their official capacities are legally indistinct from the City of San Antonio. *See Brandon v. Holt*, 469 U.S. 464, 471-73 (1985); *Sherrod v. Palm Beach Co. School Dist.*, 237 Fed. Appx. 423, 426 (11th Cir. 2007). Suit against Phil Hardberger, Sheryl L. Sculley, and William P. McManus in their official capacity is redundant. *See Sherrod v. Palm Beach Co. School Dist.*, 237 Fed. Appx. 423, 426 (11th Cir. 2007); *Messner v. Calderone*, 2007 WL 1832116 (N.D. Ill. 2007); *Baines v. Masiello*, 288 F.Supp. 376, 384 (W.D.N.Y. 2003); *Holley v. City of Roanoke*, 162 F.Supp.1335, 1341 (M.D. Ala. 2001); *Verde v. City of Philadelphia*, 862 F.Supp. 1329, 1336-37 (E.D.Pa. 1994).

3. The substance of the Plaintiffs claims will not be diminished; therefore, in order to avoid confusion and for judicial economy, the Plaintiffs' claims against Phil Hardberger in his official capacity as Mayor of San Antonio, Sheryl L. Sculley in her official capacity as City Manager of San Antonio, and William P. McManus in his official capacity as Chief of Police of the City of San Antonio should be dismissed.

WHEREFORE, PREMISES CONSIDERED, DEFENDANTS PHIL HARDBERGER, IN HIS OFFICIAL CAPACITY AS MAYOR OF SAN ANTONIO; SHERYL L. SCULLEY, IN HER OFFICIAL CAPACITY AS CITY MANAGER OF SAN ANTONIO; AND WILLIAM P. MCMANUS, IN HIS OFFICIAL CAPACITY

AS CHIEF OF POLICE OF THE CITY OF SAN ANTONIO move this Court to exercise its discretion and dismiss all claims against them and for such other and further relief, both in law and in equity, to which these Defendants may be entitled.

Respectfully Submitted,

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/s/

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ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that on December 19, 2007 I electronically filed the foregoing with the Clerk of Court using the CM/ECF system that will send notification of such filing to the following:

Amy H. Kastely
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San Antonio, Texas 78212

- CMRRR
- Hand Delivery
- Fax

/s/

**DEBORAH LYNNE KLEIN
CATHY J. SHEEHAN**